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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1969

No. 1119

CARMEN O. HERRERO, et al.,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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Subject Index

I

Page

Reference to the Official and Unofficial Reports of Opinions Delivered in the Courts Below 1

II

Decision Asked to be Reviewed 2

III

Jurisdictional Statement 2

IV

Summary Statement of the Matters Involved 3

V

Questions Presented for Review 6

VI

Reasons for the Allowance of the Writ 6

VII

Argument 8

1. Whether the United States Court of Appeals for the Ninth Circuit misconstrued and misapplied the Dow and the Calvo Cases 8
2. The United States Court of Appeals for the Ninth Circuit improperly and erroneously affirmed the Erroneous Decision of the District Court of Guam 9
3. It was error to hold the effective Date of Taking was the 1st day of July, 1962 10
4. It was error to preclude the Defendants from offering Evidence as to Any Increase in Value of their Property resulting from the Existing Pavement and Grading 11
5. It was error to permit the United States to Omit Certain Similarly situated Small Parcels adjacent to Parcels already tried in the Two Sections of Route 1 which are embraced in this Appeal 12

Table of Authorities Cited

Cases Pages

Calvo v. United States, 303 F.2d 902 (1962) 9 Cir....5, 6, 8, 9, 10

Covered Wagon, Inc. v. C.I.R., 369 F.2d 629, 8 Circuit 11

Travis v. United States, 287 F.2d 916, Court of Claims 11

United States v. Dow, 357 US 17, 2 L.ed.2d 1109, 78 S.Ct. 1039 .....5, 6, 8

United States v. McCrory Holding Company, 294 F.2d 812, 5 Circuit 11

United States v. Sunset Cemetery Company, 132 F.2d 163, 7 Circuit 11

Statutes

28 U.S.C. Section 1254 3

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CARMEN O. HERRERO, et al.,
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Your petitioner respectfully shows:

I

REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE COURTS BELOW

The opinion and judgment of the Court of Appeals for the Ninth Circuit is set forth in the appendix of

this petition as Appendix A (Nos. 23,004 and 23,996), there is no official report of this judgment as yet. The order of the Court of Appeals for the Ninth Circuit denying petitioners' petition for a rehearing and their suggestion for rehearing en banc is set forth in Appendix B of this petition. The judgments of the District Court of Guam in both the first and second hearings, dated the 18th day of June, 1968, and the 12th day of July, 1968, respectively, are set forth in Appendix C of this petition. The judgments of the District Court of Guam are unreported.

II

DECISION ASKED TO BE REVIEWED

The judgment of the United States Court of Appeals for the Ninth Circuit sought to be reviewed is set forth in Appendix A of this petition. The date of said judgment is September 3, 1969. The denial of petitioners' petition for rehearing and petitioners' suggestion for a rehearing en banc is dated November 24, 1969. The date of this petition for certiorari is January 23, 1970 and is being mailed to the Clerk of the United States Supreme Court air mail on the 23rd day of January, 1970.

III

JURISDICTIONAL STATEMENT

The statutory provision believed to sustain the jurisdiction of this Court to review the judgment set

forth in Appendix A is that part of Section 1254, Title 28 U.S.C. reading as follows:

> "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

The basis for federal jurisdiction in the Court of the first instance is Acts of Congress, 1 August 1888 (25 Stat. 357); 40 U.S.C. 257, 2 August 1946 (60 Stat. 803); 21 September 1959 (73 Stat. 588) 26 September 1961 (75 Stat. 658); (46 Stat. 1421); 40 U.S.C. 258a, and 1424a (Title 48 U.S.C.A.), 68 Stat. 4 June 1958, Public Law 85-444, paragraphs 1, 2, 72 Stat. 178.

IV

SUMMARY STATEMENT OF THE MATTERS INVOLVED

Prior to the 30th day of June, 1962, the United States of America held under leasehold considerable portions of Routes 1 and 4 on Guam. The leases were condemnation leaseholds which were permitted to expire without renewal on the 30th day of June, 1962. In the year 1964 seven cases (Nos. 229-64; 308-64; 312-64; 321-64; 323-64; 349-64; 390-64) were filed in the United States Court of Claims, and one in the year 1965 (No. 1-65), seeking just compensation for their property situated in these two highways.

On the 30th day of March, 1965, the United States of America filed an action in the District Court of

Guam to condemn various parcels situated in Route 1, and on the 12th day of April, 1965, filed an action in the District Court of Guam to condemn various parcels situated in Route 4.

Identical questions are involved in both condemnation actions and because of that the landowners had joined in the two appeals from the first two trials in Civil No. 26-65 (Nos. 23,004 and 23,996). The first two trials involved small parcels in two sections of Route No. 1 lying within the City of Agana. Though the United States Court of Appeals for the Ninth Circuit refused to stay further trials until the questions involved in the two appeals were finally concluded, the then Judge of the District Court of Guam did stay all further trials.

In the two trials which resulted in the two appeals which were consolidated for argument in the United States Court of Appeals for the Ninth Circuit there was no question of severance since no parcels involving that question were scheduled for trial. There were 17 parcels involved in the first trial, and 23 in the second trial. An approximate equal number of parcels likewise having no severance involved remained to be tried in the two sections of the highway previously tried.

Condemnation action No. 26-65 was filed on the 30th day of March, 1965, and a declaration of taking and order of possession was entered at that time. Subsequently, an amended order of possession and declaration of taking was filed retroactively condemning the property as of the first day of July, 1962. The Dis-

trict Court of Guam held that 1 July, 1962, was the effective date of taking. The District Court of Guam likewise held at the trials that the defendants could not offer evidence as to any increased value of the land resulting from the existing pavements or grading, believed by the defendants to be fruits of expired leases. The landowners believe the District Court of Guam was in error in holding that the effective date of taking was 1 July, 1962, rather than the date of the filing of the original declaration of taking in March 1965, that the District Court of Guam erred in permitting the United States to file an amended order of possession and declaration of taking to retroactively take possession and vest title in the United States thirty three months prior to the filing of the original declaration of taking.

The District Court of Guam was in error in not permitting the defendants to offer evidence, for whatever it might be worth, as to the increase in value resulting from the fruits of expired leases.

The United States Court of Appeals for the Ninth Circuit on the 3rd day of September, 1969, relying upon the *United States v. Dow*, 357 US 17, 2 L.ed.2d 1109, 78 S.Ct. 1039, and distinguishing that case from *Calvo v. United States*, 303 F.2d 902 (1962) 9 Circuit, affirmed the District Court of Guam in the two consolidated appeals. A motion for rehearing or a rehearing en banc was duly filed and on November 24, 1969 was denied. A timely motion for a stay of the mandate was made and the stay of the mandate was extended to the 24th day of January, 1970, in order

that petitioners might petition this Court for writ of certiorari.

V

QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals for the Ninth Circuit misconstrued and misapplied the *Dow* and the *Calvo* Cases.

2. Did the United States Court of Appeals for the Ninth Circuit improperly and erroneously affirm the erroneous decision of the District of Guam?

3. Was it error to hold the effective date of taking as the 1st day of July, 1962?

4. Was it error to preclude the defendants from offering evidence as to any increase in value of their property resulting from the existing pavements and grading?

5. Was it error to permit the United States to present evidence of value as to similar and adjacent parcels in the same highway to different juries in the same case?

VI

REASONS FOR ALLOWANCE OF THE WRIT

1. The Declaration of Taking Act is an act solely designed to benefit the government and should be strictly and narrowly construed. No court until the instant appeal from the United States Court of Appeals for the Ninth Circuit has held that this act

can be applied retroactively, though numerous cases have construed this act and several have held it could not be retroactively used. None previously have permitted more than relatively minor corrections such as to include omitted parcels, or correct areas and descriptions. This Court should state the permissible limits of such amendments to a declaration of taking.

2. The United States Court of Appeals for the Ninth Circuit in its judgment of 3 September, 1969, settled a problem that should be resolved by this court and in doing so set aside its own previous decision.

3. In the absence of evidence as to the exact date of the first exercise of domain over the property condemned, was it not error to preclude the offering of evidence to attempt to show any increased value, the fruits of former leases?

4. Under the facts and evidence in this case, was it not error to hold that the physical seizure method was used?

5. Selecting small pieces of property from within the two sections of the highway already tried to have their value determined by other jurors seems to deprive various landowners of the equal protection of the law and permit jury shopping by the government.

VII

ARGUMENT

1. **WHETHER THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT MISCONSTRUED AND MISAPPLIED THE DOW AND THE CALVO CASES.**

It is admitted without argument that title to property may be acquired by the government by condemnation or by the physical seizure method, but when the facts in the instant case are compared with the *Dow* and *Calvo* cases, it is apparent the *Dow* case should have no application. The facts in the instant case are squarely within the rule laid down in the *Calvo* case. The *Dow* case involved an action for condemnation, the property after that action was commenced being deeded to Dow, but grantors reserved the area under condemnation to themselves. It was not a physical seizure case, the government being in possession pursuant to a court order prior to the filing of the declaration of taking.

In the *Calvo* case the property had been leased and used as a road during the leaseholds. The leaseholds were permitted to expire, the property continued to be used by everyone for a period of years after the last lease and during that period some maintenance was done on the road. A subsequent condemnation in fee being filed the question arose as to the date of taking, it was held that the date of the declaration of taking was the date of the taking, not any date previous.

In the instant case a series of leaseholds were permitted to expire midnight the 30th day of June, 1962. As in the *Calvo* case, the highway continued to be

used by everyone. In 1964 and 1965 eight cases seeking just compensation were filed in the United States Court of Claims by numerous landowners and the United States answered in all cases.

Subsequently, on the 30th day of March, 1965, a declaration of taking was filed in Civil Case 26-65. Concededly, at that instant title passed to the United States. Subsequently, an amended declaration of taking was filed on the 6th day of May, 1965, retroactively taking title as of 1 July, 1962. Obviously, title passed to the United States on the filing of the declaration of taking. The ruling in the *Calvo* case should have been applied.

---

2. THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT IMPROPERLY AND ERRONEOUSLY AFFIRMED THE ERRONEOUS DECISION OF THE DISTRICT COURT OF GUAM.

That Court held that appellants, if the date of the declaration of taking was 30 March, 1965, would enjoy both increased land value and the value of improvements made by the government. If in fact there had been any hiatus between midnight the 30th of June, 1962, and any act of domination by the government under the rule laid down in the *Calvo* case, possession had reverted back to the landowners. There is no evidence as to any control or maintenance during the period between June, 1962, and the 30th day of March, 1965. Any grading, as held in the *Calvo* case, would be a fruit of expired leases and could properly be considered in determining value. If in fact the

government at any time in between those two dates had exercised control of the property in question, that would be the date of physical seizure. The record contains no evidence on that point.

Under similar facts and circumstances, the land in the *Calvo* case was held to be abandoned and yet in the instant case it was held that it was a physical seizure. It is not the duty of the United States to provide highways for the Territory of Guam, that is the duty of the local government. The amount of money possibly involved is not important, the principle is, if there was in fact an act of physical seizure, there must be evidence, yet none was introduced. Therefore, the United States Court of Appeals for the Ninth Circuit erred in affirming the decision of the District Court of Guam.

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3. IT WAS ERROR TO HOLD THE EFFECTIVE DATE OF TAKING WAS THE 1ST DAY OF JULY, 1962.

In the absence of evidence and there is none in the record, the first act of possession was the filing of the declaration of taking on the 30th day of March, 1965. If there was a physical seizure prior to that, concededly, that would be the date, but evidence should have been introduced as to what that date was. There is no evidence in the record. Evidence could have been obtained, if in fact agents of the United States had exercised any control over the land in question, or had performed any maintenance work or done any repairs. Surely, their records could have beeen produced, yet no attempt was made to do so.

In the absence of such evidence, one may not, we submit, reason that sometime during thirty-three months such an act took place. In the absence of evidence we submit that the filing of the declaration of taking on the 30th day of March, 1965, is the first demonstrated act of taking, *Covered Wagon, Inc. v. C.I.R.*, 369 F.2d 629, 8 Circuit; *United States v. McCrory Holding Company*, 294 F.2d 812, 5 Circuit; and *Travis v. United States*, 287 F.2d 916, Court of Claims.

If in fact title, as the declaration of taking act states, passed to the United States at the moment of the filing of the declaration of taking on 30 March, 1965, it could not have been retroactively passed back unto the landowners as of 1 July, 1962, by amendment to the declaration of taking, *United States v. Sunset Cemetery Co.*, 132 F.2d 163, 7 Circuit.

---

4. IT WAS ERROR TO PRECLUDE THE DEFENDANTS FROM OFFERING EVIDENCE AS TO ANY INCREASE IN VALUE OF THEIR PROPERTY RESULTING FROM THE EXISTING PAVEMENT AND GRADING.

Some value may have been imparted to the land by the grading and by the pavement, on part of the land taken, which occurred during prior leases. Under the theory that the fruits of an expired lease pass to the landowner, if in fact these fruits have any value, that is an item to be considered. Obviously, a jury might have concluded, in the instant case such fruits imparted no value and as to certain parcels a jury might have concluded that they are a detriment, but in the

absence of any evidence showing a physical seizure on the 1st day of July, 1962, it was error not to permit the jury to consider such facts.

---

5. IT WAS ERROR TO PERMIT THE UNITED STATES TO OMIT CERTAIN SIMILARLY SITUATED SMALL PARCELS ADJACENT TO PARCELS ALREADY TRIED IN THE TWO SECTIONS OF ROUTE 1 WHICH ARE EMBRACED IN THIS APPEAL.

The two trials covered two short sections of Route 1. From each section certain scattered parcels were omitted from the trial to await another trial, thus in each one of these two sections another jury, it is planned, will decide upon the value and just compensation for parcels in some instances but a few feet from a previously tried parcel.

This does not appear to be the orderly disposition of a condemnation action but appears to be an attempt by the United States to try and set value precedents, set by various juries, in the same immediate area for negotiating purposes with the landowners. Surely, this is improper. The Court of Appeals for the Ninth Circuit erred by condoning the same. We also submit this denies, or may deny, to the landowners the equal protection of the law.

Wherefore, your petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the Ninth Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court had

in the cases numbered and entitled on its docket, Nos. 23,004 and 23,996, United States of America v. Carmen O. Herrero, et al., to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that a judgment herein of said Court be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated, Agana, Guam,
January 23rd, 1970.

FINTON J. PHELAN, JR.,
J. C. ARRIOLA,
E. S. TERLAJE,
Attorneys for Petitioners.

(Appendices A, B, C and D Follow)

Appendix A

United States Court of Appeals
for the Ninth Circuit

United States of America, Plaintiff-Appellee, vs. Carmen O. Herrero, et al., Defendants-Appellants.	Nos. 23,004, 23,996

[September 3, 1969]

On Appeal from the United States District Court
for the District of Guam

Before: MERRILL and CARTER, Circuit Judges,
and POWELL, District Judge*

MERRILL, Circuit Judge:

This appeal is from judgment of condemnation of lands in Guam. Following eminent domain proceedings instituted by the Government a declaration of taking was filed pursuant to 40 U.S.C. § 258a on March 30, 1965. At issue is the date of taking: whether it should be the date of the filing of declara-

*Honorable Charles L. Powell, United States District Judge for the District of Washington, sitting by designation.

tion or an earlier date. The judgment fixes compensation on the basis of a taking on July 1, 1962. Appellants contend that compensation should have been fixed on the basis of a taking on March 30, 1965, the date of the filing of the declaration. Appellants would thereby enjoy both increased land values and the value of improvements made by the Government.

Leasehold interests in the lands involved had been taken by the Government in 1946 and the leases had regularly been extended until June 30, 1962. From that date no legal action was taken by the Government until the filing of the declaration in 1965. The theory of the Government, with which the District Court agreed, was that upon expiration of the leases in 1962, continued Government possession of the lands constituted a taking by seizure under *United States v. Dow,* 357 U.S. 17 (1958).

Appellants rely upon this court's holding in *Calvo v. United States,* 303 F. 2d 902 (9th Cir. 1962). The issue presented by the appeal is whether, upon the facts of this case, *Dow* or *Calvo* should apply. We regard *Calvo* as distinguishable and *Dow* as controlling. Accordingly we affirm.

The property here involved now constitutes Marine Drive, the principal public highway of Guam. It runs for approximately 26 miles from the Naval Base in the south to Anderson Air Force Base in the north. It was constructed by the Government during its leasehold period. It varies in width from two-lane to six-lane and will accommodate the heaviest type of traffic.

In *Calvo* this court was also faced with a declaration of taking filed by the Government some years after expiration of leasehold interests. The property there taken also constituted a Guam roadway but quite a different sort of roadway. Under its lease the Government had bulldozed a dirt road to connect Apra Harbor on the west coast of the island with Camp Witek on the east coast for the moving of military material from the harbor to the camp. This court considered *Dow* to be distinguishable, holding that upon the *Calvo* record there was no showing of assertion of possession by the Government after termination of its lease sufficient to constitute a taking by seizure. We noted that the "seizure" claimed by the Government was a holding over after expiration of a lease. Such holding over, under such circumstances, standing alone was equivocal. The prior taking of a leasehold interest in itself suggested that government need was not of a permanent nature. Since the use to which the property had been put was consistent with a temporary need, the silence of the Government following expiration of the lease was as consistent with abandonment as with the seizure of a fee.

Thus in *Calvo* we held the property abandoned on expiration of the lease. Subsequent acts of maintenance and paving of the roadway were held not sufficient in themselves to constitute a seizure. There had, therefore, been no retaking of the property by the Government until the filing of its declaration.

Here the act of the Government in continuing to maintain a permanent highway constituting the is-

land's most heavily travelled main road clearly constituted seizure under *Dow*. The owners were completely and permanently excluded from enjoyment.

We continue in the view that to seize and say "sue me" is high-handed governmental conduct, and not to be favored. This is particularly true when, as *Dow* makes clear, the Government when pressed may, in a belated declaration, reduce the extent of its taking to something less than the fee, and the owner must thus assume the burden of suit in order to compel the Government to commit itself as to just how much of an interest it is seizing. Here, however, the use to which the property had been put spoke clearly for the Government.

Appellants contend that the District Court erred in permitting the Government to amend its complaint. As originally filed the complaint had fixed the taking as of 1965. By the amendment the Government sought to relate the taking back to 1962 pursuant to *Dow*.

The court did not err. The amendment simply sought the relief to which the Government on the facts was entitled as a matter of law. Fed. R. Civ. P. 15(a).

Other assignments of error we regard as without merit.

Judgment affirmed.

Appendix B

In the United States Court of Appeals
for the Ninth Circuit

Carmen O. Herrero, et al., Appellants, vs. United States of America, Appellee.	No. 23,004 No. 23,996

[November 24, 1969]

ORDER

Before: MERRILL and CARTER, Circuit Judges, and POWELL, District Judge

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for a rehearing in banc.

The full court has been advised of the suggestion for an in banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing in banc. Fed.R.App.P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing in banc is rejected.

Appendix C

In the District Court of Guam
Territory of Guam

Civil Case No. 26-65

United States of America,
Plaintiff,

vs.

116,738.12 square meters of land, more or less, in the territory of Guam; Carmen O. Herrero, et al., and Unknown Owners.
Defendants.

JUDGMENT

The above-entitled case coming on regularly for trial on June 11, 1968 as to the parcels hereinafter listed before the court and a jury, pursuant to notice given according to law, Plaintiff and Defendants appearing therein by counsel; and

Plaintiff and Defendants, having presented their evidence and the court and jury having heard and considered the same, the jury returned its verdict and, by its verdict, found and determined that the sums hereinafter stated after the respective Parcel and Lot numbers is the just compensation payable by the United States for the taking of an estate in fee simple

as to said parcels, the same being particularly designated and described in Exhibit "A", attached to and made a part of the Amended Complaint on file herein, for the use and benefit of the United States of America for military and naval purposes in connection with its Base Development program in the territory of Guam, to wit:

Parcel No. 3, Lot 237-New-5, Agana, containing 262 square meters, the sum of.....$3,531.76

Parcel No. 294, Lot 1455-5, Agana, containing 786 square meters, the sum of.....$10,595.28

Parcel No. 228, Lot 1362-3-1, Agana, containing 136 square meters, the sum of.....$990.08

Parcel No. 231, Lot 1365-1, Agana, containing 1906 square meters, the sum of.....$15,819.80

Parcel No. 232, Lot 1366, Agana, containing 210 square meters, the sum of.....$1,877.40

Parcel No. 239, Lot 1373-3-1, Agana, containing 61 square meters, the sum of.....$506.30

Parcel No. 229, Lot 1362-4-2, Agana, containing 217 square meters, the sum of.....$1,579.76

Parcels No. 254, 255 and 256, Lots 1395-1, 1396-3-3 and 1397-1, Agana, containing 1274 square meters, the sum of.....$13,007.54

Parcel No. 258, Lot 1399-2, Agana, containing 93 square meters, the sum of.....$872.34

Parcel No. 230, Lot 1362-5, Agana, containing 322 square meters, the sum of.....$2,676.75

Parcel No. 266, Lot 1412-1, Agana, containing 358.77 square meters, the sum of.....$3,228.93

Parcel No. 275, Lot 1429-1, Agana, containing 406 square meters, the sum of.....$4,583.74

Parcel No. 276, Lot 1430-1, Agana, containing 307 square meters, the sum of.....$3,567.34
Parcel No. 277, Lot 1431, Agana, containing 282 square meters, the sum of.....$3,276.84
Parcel No. 279, Lot 1433-1, Agana, containing 362 square meters, the sum of.....$4,199.20
Parcel No. 283, Lot 1437-2, Agana, containing 166 square meters, the sum of.....$1,909.00
Parcel No. 289, Lot 1445-3, Agana, containing 400.61 square meters, the sum of.....$4,647.08

which sums cover all claims of any kind whatsoever for the taking of such estate in said estates in fee simple; and

It further appearing that the persons entitled to said compensation are as hereinafter stated; and

It further appearing that the following sums were heretofore on March 30, 1965, deposited by the United States of America in the registry of this Court as estimated compensation for the taking of the interests in the respective parcels of real estate as follows, to wit:

Parcel No. 3, Lot No. 237-New-5, Agana	$2,620.00
Parcel No. 294, Lot No. 1455-5, Agana	7,860.00
Parcel No. 228, Lot No. 1362-3-1, Agana	270.00
Parcel No. 231, Lot No. 1365-1, Agana	3,810.00
Parcel No. 232, Lot No. 1366, Agana	420.00
Parcel No. 239, Lot No. 1373-3-1, Agana	130.00
Parcel No. 229, Lot No. 1362-4-2, Agana	435.00
Parcel No. 254, 255, and 256, Lots No. 1395-1, 1396-3-3 and 1397-1, Agana	5,095.00
Parcel No. 258, Lot No. 1399-2, Agana	370.00

Parcel No. 230, Lot No. 1362-5, Agana	645.00
Parcel No. 266, Lot No. 1412-1, Agana	1,390.00
Parcel No. 275, Lot No. 1429-1, Agana	1,625.00
Parcel No. 276, Lot No. 1430-1, Agana	1,230.00
Parcel No. 277, Lot No. 1431, Agana	1,130.00
Parcel No. 279, Lot No. 1433-1, Agana	1,450.00
Parcel No. 283, Lot No. 1437-2, Agana	665.00
Parcel No. 289, Lot No. 1445-3, Agana	1,600.00

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that judgment be entered against the United States of America as follows:

For Parcel 3, Lot No. 237-New-5, Agana, the sum of Three Thousand Five Hundred Thirty-One and 76/100 Dollars ($3,531.76) with interest on the sum of Nine Hundred Eleven and 76/100 Dollars ($911.76) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Ricardo T. Calvo and Maria G. U. Calvo. The sum of Two Thousand Six Hundred Twenty Dollars ($2,620.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 294, Lot No. 1455-5, Agana, the sum of Ten Thousand Five Hundred Ninety-Five and 28/100 Dollars ($10,595.28) with interest on the sum of Two Thousand Seven Hundred Thirty-Five and 28/100 Dollars ($2,735.28) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Ricardo T. Calvo and Maria G. U. Calvo. The sum of Seven Thousand Eight Hundred Sixty Dollars ($7,860.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 228, Lot No. 1362-3-1, Agana, the sum of Nine Hundred Ninety and 08/100 Dollars ($990.08), with interest on the sum of Seven Hundred Twenty and 08/100 Dollars ($720.08) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Pèdro S. Cruz. The sum of Two Hundred Seventy Dollars ($270.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 231, Lot No. 1365-1, Agana, the sum of Fifteen Thousand Eight Hundred Nineteen and 80/100 Dollars ($15,819.80) with interest on the sum of Twelve Thousand Nine and 80/100 Dollars ($12,009.80) at the rate of six percentum (6%) per annum, from July 1, 1962 until paid, which sum is awarded to Rosalia S. Terlaje, Jesus S. Terlaje, Juan S. Terlaje, Emiliana P. Castello and the Estate of Maria T. Diaz, deceased, Vicente T. Diaz, Administrator. The sum of Three Thousand Eight Hundred Ten Dollars ($3,810.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 232, Lot No. 1366, Agana, the sum of One Thousand Eight Hundred Seventy-Seven and 40/100 Dollars ($1,877.40) with interest on the sum of One Thousand Four Hundred Fifty-Seven and 40/100 Dollars ($1,457.40) at the rate of six percentum (6%) per annum, from July 1, 1962, until paid, which sum is awarded to the Estate of Rita T. Taimanglo, deceased, Ramona T. Gumataotao, Administratrix. The sum of Four Hundred Twenty Dollars ($420.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 239, Lot No. 1373-3-1, Agana, the sum of Five Hundred Six and 30/100 Dollars ($506.30), with interest on the sum of Three Hundred Seventy-Six and 30/100 Dollars ($376.30) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Nicolasa M. Sukola. The sum of One Hundred Thirty Dollars ($130.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 229, Lot No. 1362-4-2, Agana, the sum of One Thousand Five Hundred Seventy-Nine and 76/100 Dollars ($1,579.76), with interest on the sum of One Thousand One Hundred Forty-Four and 76/100 Dollars ($1,144.76) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to the Estate of Manuel Pangelinan Ignacio, deceased, Rita I. Mafnas, Administratrix, and Loreta Ignacio Gross, Administratrix.

For Parcels No. 254, 255, and 256, Lots No. 1395-1, 1396-3-3 and 1397-1, Agana, the sum of Thirteen Thousand Seven and 54/100 Dollars ($13,007.54) with interest on the sum of Seven Thousand Nine Hundred Twelve and 54/100 Dollars ($7,912.54) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Juan M. Materne. The sum of Five Thousand Ninety-Five Dollars ($5,095.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 258, Lot No. 1399-2, Agana, the sum of Eight Hundred Seventy-Two and 34/100 Dollars

($872.34), with interest on the sum of Five Hundred Two and 34/100 Dollars ($502.34) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Leonila D. Gutierrez. The sum of Three Hundred Seventy Dollars ($370.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 230, Lot No. 1362-5, Agana, the sum of Two Thousand Six Hundred Seventy-Six and 75/100 Dollars ($2,676.75), with interest on the sum of Two Thousand Thirty-One and 75/100 Dollars ($2,031.75), at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Domingo A. Cruz. The sum of Six Hundred Forty-Five Dollars ($645.00) heretofore paid as stated above is credited against this judgment.

For Parcel No. 266, Lot No. 1412-1, Agana, the sum of Three Thousand Two Hundred Twenty-Eight and 93/100 Dollars ($3,228.93) with interest on the sum of One Thousand Eight Hundred Thirty-Eight and 93/100 Dollars ($1,838.93) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Antonio S. Cruz. The sum of One Thousand Three Hundred Ninety Dollars ($1,390.00) heretofore paid as stated above is credited against this judgment.

For Parcel No. 275, Lot No. 1429-1, Agana, the sum of Four Thousand Five Hundred Eighty-Three and 74/100 Dollars ($4,583.74) with interest on the sum of Two Thousand Nine Hundred Fifty-Eight and 74/100 Dollars ($2,958.74) at the rate of six per-

centum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Emelia L. Mesa. The sum of One Thousand Six Hundred Twenty-Five Dollars ($1,625.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 276, Lot No. 1430-1, Agana, the sum of Three Thousand Five Hundred Sixty-Seven and 34/100 Dollars ($3,567.34) with interest on the sum of Two Thousand Three Hundred Thirty-Seven and 34/100 Dollars ($2,337.34) at the rate of six per-centum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Ramona T. Gumataotao. The sum of One Thousand Two Hundred Thirty Dollars ($1,230.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 277, Lot No. 1431, Agana, the sum of Three Thousand Two Hundred Seventy-Six and 84/100 Dollars ($3,276.84) with interest on the sum of Two Thousand One Hundred Forty-Six and 84/100 Dollars ($2,146.84) at the rate of six per-centum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Ramona T. Gumataotao, Vicente T. Gumataotao, Jose T. Gumataotao, Catalina T. Gumataotao and the Estate of Juan T. Gumataotao, deceased, Isabel G. Nelson, Administratrix. The sum of One Thousand One Hundred Thirty Dollars ($1,130.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 279, Lot No. 1433-1, Agana, the sum of Four Thousand One Hundred Ninety-Nine and 20/100 Dollars ($4,199.20) with interest on the sum

of Two Thousand Seven Hundred Forty-Nine and 20/100 Dollars ($2,749.20) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Susana C. Quitugua and the Estate of Dolores Concepcion Leon Guerrero, Manuel L. G. Leon Guerrero, Administrator. The sum of One Thousand Four Hundred Fifty Dollars ($1,450.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 283, Lot No. 1437-2, Agana, the sum of One Thousand Nine Hundred Nine Dollars ($1,909.00) with interest on the sum of One Thousand Two Hundred Forty-Four Dollars ($1,244.00) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Rosa T. Angoco. The sum of Six Hundred Sixty-Five Dollars ($665.00) heretofore paid as above stated is credited against this judgment.

And for Parcel No. 289, Lot No. 1445-3, Agana, the sum of Four Thousand Six Hundred Forty-Seven and 08/100 Dollars ($4,647.08) with interest on the sum of Three Thousand Forty-Seven and 08/100 Dollars ($3,047.08) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Maria M. Babauta. The sum of One Thousand Six Hundred Dollars ($1,600.00) heretofore paid as above stated is credited against this judgment, and

It Is Hereby Further Ordered, Adjudged and Decreed that the Clerk of this Court shall pay to said defendants any balance of the sums hereinabove

adjudged and awarded as promptly as possible after the receipt thereof from the United States of America and that, when all of the said sum have been paid, the Clerk shall note upon the docket that this judgment has been paid in full.

Dated, this day of June, 1968.

Original Signed
By: Paul D. Shriver
Judge, District Court of Guam

Paul D. Shriver
Judge, District Court of Guam

Entered in Civil Docket June 18, 1968

Received June 18, 1968.
Office of Clerk,
District Court of Guam.

Filed June 18, 1968
District Court of Guam
Agana, Guam

Appendix D

In The District Court of Guam
Territory of Guam

Civil Case No. 26-65

United States of America,
Plaintiff,

vs.

116,738.12 square meters of land, more or less, in the territory of Guam; Carmen Q. Herrero, et al., and Unknown Owners,
Defendants.

JUDGMENT

The above-entitled case coming on regularly for trial on July 10, 1968 as to the parcels hereinafter listed before the court and a jury pursuant to notice given according to law, Plaintiff and Defendants appearing therein by counsel; and

Plaintiff and Defendants, having presented their evidence and the court and jury having heard and considered the same, the jury returned its verdict and, by its verdict, found and determined that the sums hereinafter stated after the respective parcel and lot numbers is the just compensation payable by the United States for the taking of an estate in fee simple

as to said parcels, the same being particularly designated and described in Exhibit "A", attached to and made a part of the Amended Complaint on file herein, for the use and benefit of the United States of America for military and naval purposes in connection with its Base Development program in the territory of Guam, towit:

Parcel No. 17, Lot 723-1, Agana, containing 136.72 square meters, the sum of.....$3,418.00

Parcel No. 24, Lot 741-1, Agana, containing 39.91 square meters, the sum of.....$1,197.30

Parcel No. 26, Lot 743-1, Agana, containing 54.43 square meters, the sum of.....$1,360.75

Parcel No. 27, Lot 744-1, Agana, containing 91.76 square meters, the sum of.....$2,294.00

Parcel No. 33, Lot 748 Agana, containing 155.21 square meters, the sum of.....$3,880.25

Parcel No. 35, Lot 750 Agana, containing 175.71 square meters, the sum of.....$4,392.75

Parcel No. 36, Lot 750-1 Agana, containing 166.89 square meters, the sum of.....$5,006.70

Parcel No. 39, Lot 751-1 Agana, containing 177.17 square meters, the sum of.....$5,315.10

Parcels 44 and 52, Lots 754-1 and 760B-Rem, Agana, containing 468.94 square meters, the sum of.....$14,068.20

Parcel No. 46, Lot 756-Rem, Agana, containing 277.32 square meters, the sum of.....$8,319.60

Parcel 50A, Lot 758-2 Agana, containing 325.97 square meters, the sum of.....$9,779.10

Parcel No. 51, Lot 760A-Rem Agana, containing 1.50 square meters, the sum of.....$45.00

Parcel No. 65, Lot 791 Agena, containing 185.12 square meters, the sum of.....$6,664.32
Parcel No. 66, Lot 792 Agana, containing 199.32 square meters, the sum of.....$7,175.52
Parcel No. 68, Lot 795-2 Agana, containing 14.00 square meters, the sum of.....$504.00
Parcel No. 76, Lot 816-1 Agana, containing 70.47 square meters, the sum of.....$2,536.92
Parcel No. 77, Lot 817-1 Agana, containing 43.00 square meters, the sum of.....$1,548.00
Parcel No. 78, Lot 819-1 Agana, containing 45.00 square meters, the sum of.....$1,620.00
Parcel No. 80, Lot 821, Agana, containing 121.71 square meters, the sum of.....$4,381.56
Parcels No. 84 and 85, Lots 826 and 827 Agana, containing 150.75 square meters, the sum of $5,427.00

which sums cover all claims of any kind whatsoever for the taking of such estate in said estates in fee simple; and

It further appearing that the persons entitled to said compensation are as hereinafter stated; and

It further appearing that the following sums were heretofore on March 30, 1965, deposited by the United States of America in the registry of this Court as estimated compensation for the taking of the interests in the respective parcels of real estate as follows, to wit:

Parcel No. 17, Lot No. 723-1, Agana	$1,365.00
Parcel No. 24, Lot No. 741-1, Agana	400.00
Parcel No. 26, Lot No. 743-1, Agana	544.00

Parcel No. 27, Lot No. 744-1, Agana	920.00
Parcel No. 33, Lot No. 748, Agana	930.00
Parcel No. 35, Lot No. 750, Agana	1,405.00
Parcel No. 36, Lot No. 750-1, Agana	1,335.00
Parcel No. 39, Lot No. 751-1, Agana	1,065.00
Parcels No. 44 and 52, Lots No. 754-1 and 760B-Rem, Agana	3,755.00
Parcel No. 46, Lot No. 756-Rem, Agana	2,775.00
Parcel No. 50A, Lot No. 758-2, Agana	2,605.00
Parcel No. 51, Lot No. 760A-Rem, Agana	15.00
Parcel No. 65, Lot No. 791, Agana	1,110.00
Parcel No. 66, Lot No. 792, Agana	1,195.00
Parcel No. 68, Lot No. 795-2, Agana	140.00
Parcel No. 76, Lot No. 816-1, Agana	425.00
Parcel No. 77, Lot No. 817-1, Agana	430.00
Parcel 78, Lot No. 819-1, Agana	450.00
Parcel No. 80, Lot No. 821, Agana	730.00
Parcel No. 82, Lot No. 822-1, Agana	170.00
Parcels No. 84 and 85, Lots No. 826 and 827, Agana	905.00

Now, Therefore, It Is Hereby Ordered, Adjudged And Decreed that judgment be entered against the United States of America as follows:

For Parcel 17, Lot No. 723-1 Agana, the sum of Three Thousand Four Hundred Eighteen Dollars ($3,418.00)with interest on Two Thousand Fifty-Three Dollars ($2,053.00) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Angel I. Chargualaf, Antonio I. Chargualaf, Angelina C. Ignacio and Ricardo I. Chargualaf. The sum of One Thousand Three Hundred

Sixty-Five Dollars ($1,365.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 24, Lot No. 741-1 Agana, the sum of One Thousand One Hundred Ninety-Seven and 30/100 Dollars ($1,197.30) with interest on the sum of Seven Hundred Ninety-Seven and 30/100 Dollars ($797.30) at the rate of six (6%) percentum per annum from July 1, 1962, until paid, which sum is awarded to Jesus Flores Lujan. The sum of Four Hundred Dollars ($400.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 26, Lot No. 743-1 Agana, the sum of One Thousand Three Hundred Sixty and 75/100 Dollars ($1,360.75) with interest on the sum of Eight Hundred Sixteen and 75/100 Dollars ($816.75) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Benita R. Leon Guerrero, Jose Salas Rojas, Maria R. Borja and Joaquin I. Rojas. The sum of Five Hundred Forty-Four Dollars ($544.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 27, Lot No. 744-1 Agana, the sum of Two Thousand Two Hundred Ninety-Four Dollars ($2,294.00) with interest on the sum of One Thousand Three Hundred Seventy-Four Dollars ($1,374.00) at the rate of six percentum (6%) per annum, from July 1, 1962, until paid, which sum is awarded to Maria S. Rojas, Jesus S. Perez, Anita I. Salas, individually and as Guardian of Rosaline I. Salas, a minor; Angel I. Chargualaf, Antonio I. Chargualaf,

Ricardo I. Chargualaf, Angelina C. Ignacio, Rosa S. Leon Guerrero, Vincente C. Salas as their interest may hereinafter be established. The sum of Nine Hundred Twenty Dollars ($920.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 33, Lot No. 748 Agana, the sum of Three Thousand Eight Hundred Eighty and 25/100 Dollars ($3,880.25) with interest on the sum of Two Thousand Nine Hundred Fifty and 25/100 Dollars ($2,950.25) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Ramon Pereira Cruz. The sum of Nine Hundred Thirty Dollars ($930.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 35, Lot No. 750 Agana, the sum of Four Thousand Three Hundred Ninety-Two and 75/100 Dollars ($4,392.75) with interest on the sum of Two Thousand Nine Hundred Eighty-Seven and 75/100 Dollars ($2,987.75) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Magdalena Matanane. The sum of One Thousand Four Hundred Five Dollars ($1,405.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 36, Lot No. 750-1 Agana, the sum of Five Thousand Six and 70/100 Dollars ($5,006.70) with interest on the sum of Three Thousand Six Hundred Seventy-One and 70/100 Dollars ($3,671.70) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Rosa Charsagua Duenas.

For Parcel No. 39, Lot 751-1 Agana, the sum of Five Thousand Three Hundred Fifteen and 10/100 Dollars ($5,315.10) with interest on the sum of Four Thousand Two Hundred Fifty and 10/100 ($4,250.10) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Juan T. Perez. The sum of One Thousand Sixty-Five Dollars ($1,065.00) heretofore paid as above stated is credited against this judgment.

For Parcels No. 44 and 52, Lots No. 754-1 and 760B-Rem Agana, the sum of Fourteen Thousand Sixty-Eight and 20/100 Dollars ($14,068.20) with interest on the sum of Ten Thousand Three Hundred Thirteen and 20/100 Dollars ($10,313.20) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Jesus B. Santos. The sum of Three Thousand Seven Hundred Fifty-Five and 00/100 Dollars ($3,755.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 46, Lot No. 756-Rem. Agana, the sum of Eight Thousand Three Hundred Nineteen and 60/100 Dollars ($8,319.60) with interest on the sum of Five Thousand Five Hundred Forty-Four and 60/100 Dollars ($5,544.60) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Juan L. Taijeron, Administrator of the Estate of Joaquin T. Perez, deceased. Two Thousand Seven Hundred Seventy-Five Dollars ($2,775.00) heretofore paid as stated above is credited against this judgment.

For Parcel No. 50A, Lot No. 758-2 Agana, the sum of Nine Thousand Seven Hundred Seventy-Nine and

10/100 Dollars ($9,779.10) with interest on the sum of Seven Thousand One Hundred Seventy-Four and 10/100 Dollars ($7,174.10) at the rate of six per-centum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Joaquin V.E. Manibusan, Administrator of the Estate of Joaquin C. Fejeran, deceased. The sum of Two Thousand Six Hundred Five Dollars ($2,605.00) heretofore paid as stated above is credited against this judgment.

For Parcel 51, Lot No. 760A-Rem Agana, the sum of Forty-Five Dollars ($45.00) with interest on the sum of Thirty Dollars ($30.00) at the rate of six per-centum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Amalia Castro Perez, Administratrix of the Estate of Maria Cruz Castro, deceased, Jose Castro Castro, as their interest may hereinafter be established. The sum of Fifteen Dollars ($15.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 65, Lot No. 791 Agana, the sum of Six Thousand Six Hundred Sixty-Four and 32/100 Dollars ($6,664.32) with interest on the sum of Five Thousand Five Hundred Fifty-Four and 32/100 Dollars ($5,554.32) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Nicolasa G. Cruz, Angustia G. Perez, Ana G. Perez, Angustia P. Fegurgur and Enrique S.N. Fegurgur, Guardian of the Estate of Jesus G. Perez, a minor, as their interest may hereinafter be established. The sum of One Thousand One Hundred Ten Dollars ($1,110.00) heretofore paid as above stated is credited against this judgment.

For Parcel No 66, Lot No. 792 Agana, the sum of Seven Thousand One Hundred Seventy-Five and 52/100 Dollars ($7,175.52) with interest on the sum of Five Thousand Nine Hundred Eighty and 52/100 Dollars ($5,980.52) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Maria R. Mendiola. The sum of One Thousand One Hundred Ninety-Five Dollars ($1,195.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 68, Lot No. 795-2 Agana, the sum of Five Hundred Four Dollars ($504.00) with interest on the sum of Three Hundred Sixty-Four Dollars ($364.00) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Atanacio B. Hanui. The sum of One Hundred Forty Dollars ($140.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 76, Lot No. 816-1 Agana, the sum of Two Thousand Five Hundred Thirty-Six and 92/100 Dollars ($2,536.92) with interest on the sum of Two Thousand One Hundred Eleven and 92/100 Dollars ($2,111.92) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Remedios P. Mesa, Administratrix of the Estate of Jose M. Mesa, deceased. The sum of Four Hundred Twenty-Five Dollars ($425.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 77, Lot No. 817-1-1 Agana, the sum of One Thousand Five Hundred Forty-Eight Dollars ($1,548.00) with interest on the sum of One Thousand

One Hundred Eighteen Dollars ($1,118.00) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Remedios P. Mesa, Administratrix of the Estate of Jose M. Mesa, deceased. The sum of Four Hundred Thirty Dollars ($430.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 78, Lot No. 819-1 Agana, the sum of One Thousand Six Hundred Twenty Dollars ($1,620.00) with interest on the sum of One Thousand One Hundred Seventy Dollars ($1,170.00) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Antonio M. Manibusan. The sum of Four Hundred Fifty Dollars ($450.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 80, Lot No. 821 Agana, the sum of Four Thousand Three Hundred Eighty-One and 56/100 Dollars ($4,381.56), with interest on the sum of Three Thousand Six Hundred Fifty-One and 56/100 Dollars ($3,651.56) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Ignacio B. Perez and Trinidad L. Perez, as their interest may hereinafter be established. The sum of Seven Hundred Thirty Dollars ($730.00) heretofore paid as above stated is credited against this judgment.

For Parcel No. 82, Lot 822-1 Agana, the sum of Six Hundred Twelve Dollars ($612.00) with interest on the sum of Four Hundred Forty-Two Dollars ($442.00) at the rate of six percentum (6%) per

annum from July 1, 1962, until paid, which sum is awarded to Maria L. G. Untalan and Antonio L. Untalan as their interest may hereinafter be established. The sum of One Hundred Seventy Dollars heretofore paid is credited against this judgment;

and for Parcels No. 84 and 85, Lots No. 826 and 827, Agana, the sum of Five Thousand Four Hundred Twenty-Seven Dollars ($5,427.00), with interest on the sum of Four Thousand Five Hundred Twenty-Two Dollars ($4,522.00) at the rate of six percentum (6%) per annum from July 1, 1962, until paid, which sum is awarded to Francisca C. Manibusan. The sum of Nine Hundred Five Dollars ($905.00) heretofore paid is credited against this judgment, and

It Is Hereby Further Ordered, Adjudged and Decreed that the Clerk of this Court shall pay to said defendants any balance of the sums hereinabove adjudged and awarded as promptly as possible after the receipt thereof from the United States of America and that, when all of the said sum have been paid, the Clerk shall note upon the docket that this judgment has been paid in full.

Dated, this day of July, 1968.

/s/ Paul D. Shriver
Paul D. Shriver
Judge, District Court of Guam

Filed, July 12, 1968,
District Court of Guam
Agana, Guam

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1119

CARMEN O. HERRERO, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 416 F.2d 945.

JURISDICTION

The judgment of the court of appeals was entered on September 3, 1969. A petition for rehearing with suggestion for rehearing *en banc* was denied on November 24, 1969 (Pet. App. B). The petition for a writ of certiorari was filed on January 24, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

377-532—70

QUESTION PRESENTED

Whether the government's continued exercise of possession and dominion over land leased by the United States on which a highway was constructed and maintained by the United States for public use since 1950 constituted a taking upon expiration of the leases in 1962.

STATEMENT

In 1946 the United States acquired leasehold interests in the land here involved for the purpose of constructing and maintaining roads in and near Agana, Guam. The leases were regularly extended until 1962. As described by the court of appeals (Pet. App. A, ii),

> The property here involved now constitutes Marine Drive, the principal public highway of Guam. It runs for approximately 26 miles from the Naval Base in the south to Anderson Air Force Base in the north. It was constructed by the Government during its leasehold period. It varies in width from two-lane to six-lane and will accommodate the heaviest type of traffic.

Although the leases were not extended after June 30, 1962, no further legal action was taken by the government until 1965, when this condemnation suit and declaration of taking were filed (Pet. App. A, i-ii). During the intervening three years, the government continued to "maintain a permanent highway constituting the island's most heavily travelled main road * * *. The owners were completely and permanently excluded from enjoyment" (Pet. App. A, iii-iv).

The district court determined, on the basis of these facts, that the date of taking, and hence the appropriate date for valuation of the lands taken, was July 1, 1962. As the court of appeals noted (Pet. App. A, ii), the district court concluded "that upon expiration of the leases in 1962, continued Government possession of the lands constituted a taking by seizure under *United States* v. *Dow,* 357 U.S. 17 (1958)." The court of appeals affirmed, relying on *United States* v. *Dow, supra,* and finding *Calvo* v. *United States,* 303 F. 2d 902 (C.A. 9), on which petitioners rely, to be distinguishable (Pet. App. A, ii-iv).

ARGUMENT

The decision of the Ninth Circuit is correct and does not conflict with any decision of this Court or any other circuit. The case is of narrow significance because it turns on the peculiar facts presented; further review is thus not warranted.

1. It was on the basis of the unique facts of this case that the Ninth Circuit distinguished its own earlier decision in *Calvo* v. *United States,* 303 F. 2d 902, which similarly involved the taking of Guam land by the government, but where an abandonment upon expiration of the lease was found (see Pet. App. A, iii). By contrast, the taking in the instant case was accomplished by the government's continued possession and dominion over the land after expiration of the leases adverse to the landowners' interests. In such circumstances, a physical seizure was effected on July 1, 1962, and the fact that a declaration of taking was not filed until some later

time does not change the actual date of taking. The law applicable to this case was settled in *United States* v. *Dow*, 357 U.S. 17, 21–23, where this Court stated:

> Broadly speaking, the United States may take property pursuant to its power of eminent domain in one of two ways: it can enter into physical possession of property without authority of a court order; or it can institute condemnation proceedings under various Acts of Congress providing authority for such takings. * * *
>
> Although in both classes of "taking" cases—condemnation and physical seizure—title to the property passes to the Government only when the owner receives compensation, * * * or when the compensation is deposited into court pursuant to the Taking Act, * * * the passage of title does not necessarily determine the date of "taking." The usual rule is that if the United States has entered into possession of the property prior to the acquisition of title, it is the former event which constitutes the act of taking. It is that event which gives rise to the claim for compensation and fixes the date as of which the land is to be valued and the Government's obligation to pay interest accrues. * * *
>
> * * * * *
>
> The scheme of the Taking Act makes it plain that when the Government files a declaration before it has entered into possession of the property the filing constitutes the "taking." But neither the language nor the history of the Act provides a reliable indication as to the in-

> tention of Congress in cases, such as the one before us, where a declaration is filed *after* the Government has taken possession. Nevertheless, a number of considerations have led us to the view that in such cases the date of "taking" is the date on which the Government entered and appropriated the property to public use.

The fact that the taking here was of a permanent nature is shown by the fact that the United States, after expiration of the leases, has continued to maintain this property as the main highway of Guam (see *supra,* p. 2). It is difficult to envisage clearer evidence of an intent to appropriate the land permanently (Pet. App. A, iv).

2. The other questions raised by petitioners and the arguments in support thereof (see Pet. 11–12) are not properly before this Court, since there was no need or occasion for the court of appeals to reach them. At all events, there is no merit in any of the other claims. For example, their contention that the compensation award should include the actual value of the pavement constituting the highway, in addition to being erroneous as a matter of law, depends upon acceptance of their basic proposition that the highway reverted to them in 1962 and was retaken in 1965. Similarly, the assertion that the value of all the tracts in the area should have been determined in a single proceeding is without substance. *Carlstrom* v. *United States,* 275 F.2d 802 (C.A. 9); *Gwathmey* v. *United States,* 215 F.2d 148 (C.A. 5); *Atlantic Coast Line R.R. Co.* v. *United States,* 132 F.2d 959 (C.A. 5).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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